THE HON'BLE SRI JUSTICE P.S.NARAYANA

AND

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT APPEAL NO.394 of 2007

Between:

Katharu Kotamma. .. APPELLANT

Versus

The District Collector, Guntur,
Guntur District and two others. .. RESPONDENTS

THE HON'BLE SRI JUSTICE P.S.NARAYANA

AND

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT APPEAL NO.394 of 2007

JUDGMENT: (per PSNJ.)

The Writ Appeal is filed aggrieved by an order made in Writ Petition No.7072 of 2007, dated 9.4.2007.

2. The appellant-petitioner filed Writ Petition No.7072 of 2007 praying for the relief of issuance of a Writ, order or direction more particularly one in the nature of a Writ of Mandamus declaring the action of the respondents in demolishing the house and interfering with the ownership and peaceful possession of 20 cents dry land in survey No.93 of Kolanukonda village of the petitioner without any notice or order as illegal, arbitrary, violative of natural justice and consequently direct the respondents not to interfere with the ownership and peaceful possession of the petitioner in her 20 cents of dry land in S.No.93 of Kolanukonda village by allotting the same to any third parties.

3. The appellant-petitioner claims to be the absolute owner of the land admeasuring 20 cents in S.No.93 of Kolanukonda village of Tadepalli Mandal in Guntur District. It was stated that in 1949 the land was assigned to her husband, late Venkaiah, and after his death, she had been in continuous possession since 2001. Several other factual details also had been narrated.

4. On the strength of the affidavit filed by the writ petitioner and also in the light of the representation made by the learned Assistant Government Pleader for Revenue (General-A), the Writ Petition was dismissed with certain observations.

5. When specific stand is taken that the provisions of Land Encroachment Act, as such, has no application at all since the land is a private land, instead of giving opportunity to other side to file a counter affidavit either denying the allegations or explaining their stand, disposing of the matter in such a fashion, in the considered opinion of this Court, is not justified. Without expressing any further opinion relating to the merits and demerits of the matter, the impugned order is hereby set aside.

6. In the Writ Petition No.7072 of 2007, Rule Nisi is issued and the respondents are at liberty to file their counter affidavits taking their respective stands. It is also needless to say that till the counter affidavits are filed and the matter is disposed of by the learned Judge in accordance with law, status quo obtaining as on today to be maintained.

7. Accordingly, the Writ Appeal is allowed to the extent indicated above. There shall be no order as to costs.

(P.S.NARAYANA, J.)

9th May, 2007.

(NOOTY RAMAMOHANA RAO.J.)

SSR